



## SOLE SOURCE CONTRACT

C. 37.09.011.3.00

SERIAL 09028-SS

This Contract is entered into this 18th day of March 2009 by and between Maricopa County, a political subdivision of the State of Arizona, and Windsor Management Group (Contractor) for the purchase of Infinite Visions Software and support.

### 1.0 TERM:

- 1.1 This Contract is for a term of five (5) years, beginning on the 1<sup>st</sup> day of April, 2009 and ending the 31st day of March, 2014.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the term of this Contract for additional terms up to a maximum of five (5) years, (or at the County's sole discretion, extend the contract on a month-to-month basis for a maximum of six (6) months after expiration). The County shall notify the Contractor in writing of its intent to extend the Contract term at least thirty (30) calendar days prior to the expiration of the original contract term, or any additional term thereafter.

### 2.0 INVOICES AND PAYMENTS:

- 2.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:
  - Company name, address and contact
  - County bill-to name and contact information
  - Contract Serial Number
  - County purchase order number
  - Invoice number and date
  - Payment terms
  - Date(s) of service
  - Contract Item number(s)
  - Description of services
  - Pricing per unit of service
  - Extended price
  - Total Amount Due
- 2.2 Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.
- 2.3 Payment shall be made to the Respondent by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer

(EFT) process. After Award the Respondent may fill-out an EFT Enrollment form located on the Maricopa County Department of Finance Website as a fillable PDF document ([www.maricopa.gov/finance/](http://www.maricopa.gov/finance/)).

- 2.4 EFT payments to the routing and account numbers designated by the Respondent will include the details on the specific invoices that the payment covers. The Respondent is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

**3.0 TAX: (SERVICES)**

No tax shall be levied against labor. It is the responsibility of the Contractor to determine any and all taxes and include the same in proposal price.

**4.0 TAX: (COMMODITIES)**

Tax shall not be levied against labor. Sales/use tax will be determined by County.

**5.0 DUTIES:**

- 5.1 The Contractor shall perform all duties stated in Exhibit "B."

- 5.2 The Contractor shall perform services as stated in Exhibit "B," or as otherwise directed in writing.

**6.0 POST AWARD MEETING:**

The Contractor may be required to attend a post-award meeting with the Using Agency to discuss the terms and conditions of the Contract. This meeting will be coordinated by the Procurement Officer of the Contract.

**7.0 TERMS & CONDITIONS:**

**7.1 INDEMNIFICATION:**

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

**7.2 INSURANCE REQUIREMENTS:**

Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

#### 7.2.1 Commercial General Liability:

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

#### 7.2.2 Automobile Liability:

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

7.2.3 Workers' Compensation:

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

7.2.4 Certificates of Insurance.

7.2.4.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

In the event any insurance policy (ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

7.2.5 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

7.3 WARRANTY OF SERVICES:

7.3.1 The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. County's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.

7.3.2 In addition to its other remedies, County may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.

CONTRACTOR CANNOT ASSURE YOU THAT THE PERFORMANCE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE. CONTRACTOR WILL MAKE EVERY ATTEMPT TO CORRECT REPORTED SOFTWARE ERRORS (ERRORS DO NOT INCLUDE FUNCTIONAL ENHANCEMENTS OR FEATURES THAT THE CUSTOMER MAY DECIDE ARE NECESSARY) IN A REASONABLE TIME PERIOD. CONTRACTOR DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ALL GOODS AND SERVICES FURNISHED UNDER THIS AGREEMENT.

7.4 PROCUREMENT CARD ORDERING:

The County may determine to use a MasterCard Procurement Card, to place and/or make payment for orders under the Contract.

7.5 INTERNET COMMUNICATIONS AND ORDERING:

The County may at its option use the Internet to communicate and to place orders under this Contract.

7.6 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County Materials Management Department  
Attn: Director of Purchasing  
320 West Lincoln Street  
Phoenix, Arizona 85003

For Contractor:

Windsor Management Group.  
Attn: Bruce Borchert  
8950 South 52nd St. Suite 309  
Tempe, AZ 85284

7.7 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract expiration. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

7.8 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

7.9 TERMINATION FOR DEFAULT:

7.9.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

7.9.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

7.9.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

7.9.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

7.10 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

7.11 OFFSET FOR DAMAGES:

7.11.1 In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

7.11.2 Limitations of Remedy and Liability

The County's exclusive remedy and the Contractor's entire liability in contract, tort or otherwise is for charges paid by the County for the software support services furnished under this agreement during the twelve months preceding the date of the loss.

The County and the Contractor are not liable for any indirect, special or consequential damages or lost profits to anyone arising out of this Contract or the use of any equipment, product, documentation or services.

7.12 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

7.13 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the County and the Contractor.

7.14 SUBCONTRACTING:

As this is a sole source contract, the Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof.

7.15 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for County.

7.16 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse County for the services not so adequately supported and documented.

7.17 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

7.18 ALTERNATIVE DISPUTE RESOLUTION:

7.18.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

7.18.1.1 Render a decision;

7.18.1.2 Notify the parties that the exhibits are available for retrieval; and

7.18.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

7.18.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

7.18.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

7.19 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:

7.19.1 By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The contractor shall obtain

statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV.

- 7.19.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

7.20 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:

- 7.20.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

- 7.20.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

7.21 AVAILABILITY OF FUNDS:

- 7.21.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The Director shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

- 7.21.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

7.22 CONTRACT COMPLIANCE MONITORING

County shall monitor the Contractor's compliance with, and performance under, the terms and conditions of this Contract. The Contractor shall make available for inspection and/or copying by County, all records and accounts relating to the work performed or the services provided under this Contract.

- 7.22.1 If any of the services do not conform with Contract requirements, County may require the Contractor to perform the services again in conformity with Contract requirements, at an increase in Contract amount. When the defects in services cannot be corrected by re-performance, County may:

- 7.22.1.1 Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and



7.22.1.2 Reduce the Contract price to reflect the reduced value of the services performed.

7.22.2 If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, County may:

7.22.2.1 By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by County that is directly related to the performance of such service; or

7.22.2.2 Terminate the Contract for default.

## 7.23 STRICT COMPLIANCE

Acceptance by County of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations. All changes in performance obligations under this Contract must be in writing.

## 7.24 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

## 7.25 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

## 7.26 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

## 7.27 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States County Court for the County of Arizona, sitting in Phoenix, Arizona

## 7.28 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

7.28.1 The undersigned (authorized official signing for the Contractor) certifies to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

7.28.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

7.28.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

7.28.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

7.28.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.

7.28.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contact.

7.28.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

7.29 OWNERSHIP OF SOFTWARE:

Contractor has developed and owns a proprietary software system for use by school districts and other public agencies for financial recordkeeping and budgeting purposes, which consists of several modules or components, which are marketed by Contractor under the trademark INFINITE VISIONS®. Each module may be used by itself or as part of a system containing more than one module. A portion of the Scope of Work consists of licensing to the County the software developed by Contractor. The County expressly acknowledges and agrees that it will be a nonexclusive licensee only of that software and that Contractor owns all rights to the software, including any enhancements, improvements and upgrades that may be developed in the course of performing the services called for in the Scope of Work. The County also expressly acknowledges that the trademarks, service marks, copyrights and proprietary information developed by Contractor and used in connection with the services called for in the Scope of Work are owned by Contractor and that the County has no rights to use them except as provided in this Contract.

7.30 SPECIAL INSOLVENCY PROVISION:

Notwithstanding any other term of this Contract, Contractor agrees that in the event it is adjudicated bankrupt or ceases to do business, and this Contract is not assumed by a successor which has the capability to perform satisfactorily hereunder, Contractor will supply to the County for its use the source and object codes for the software licensed to the County. The County may thereafter use the source and object codes in the manner contemplated by the Contract but no other manner and may not sublicense to or allow the use of the codes by any other person or agency.

7.31 ADDITIONAL LICENSING PROVISIONS:

The software license granted by Contractor to the County in this Contract is limited to use with respect to school districts in the County with fewer than 4,000 students or those Districts that were being hosted on the County's AS400 as of January 1, 2004.

7.32 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

7.33 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

7.33.1 Exhibit A, Pricing.

7.33.2 Exhibit B, Scope of Work.

7.33.3 Exhibit C, Contractor Travel Policy.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

**CONTRACTOR**



AUTHORIZED SIGNATURE  
Bruce A. Borchers, Member Manager

PRINTED NAME AND TITLE  
8950 S. 52<sup>nd</sup> Street, Suite 309, Tempe, AZ 85284

ADDRESS  
03/04/2009

DATE

**MARICOPA COUNTY**

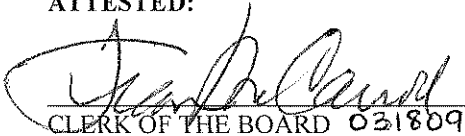


CHAIRMAN, BOARD OF SUPERVISORS

MAR 27 2009

DATE

**ATTESTED:**

  
CLERK OF THE BOARD 031809

MAR 27 2009

DATE

**APPROVED AS TO FORM:**



DEPUTY MARICOPA COUNTY ATTORNEY

3/25/9

DATE

## EXHIBIT A PRICING

SERIAL 09028-SS	
NIGP CODE: 20810	
RESPONDENT NAME:	Windsor Management Group, LLC
VENDOR NUMBER :	86-0811316
ADDRESS:	8950 S. 52 <sup>nd</sup> Street, Suite 309
	Tempe, AZ 85284
P.O. ADDRESS:	
TELEPHONE NUMBER:	480-777-7166
FACSIMILY NUMBER:	480-777-7164
WEB SITE:	www.infinitevisions.com
REPRESENTATIVE:	Bruce Borchert
REPRESENTATIVE E-MAIL:	bruceb@infinitevisions.com

	<u>YES</u>	<u>NO</u>	<u>REBATE</u>
WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT:	[ ]	[X]	
WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:	[ ]	[X]	
WILL OFFER REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD:	[ ]	[X]	% _____

(Payment shall be made within 48 hours of utilizing the Purchasing Card)

PAYMENT TERMS: RESPONDENT IS REQUIRED TO PICK ONE OF THE FOLLOWING.  
 PAYMENT TERMS WILL BE CONSIDERED IN DETERMINING LOW BID. FAILURE TO  
 CHOOSE PAYMENT TERMS WILL RESULT IN A DEFAULT TO NET 30 DAYS.

<input type="checkbox"/> NET 10 DAYS	<input type="checkbox"/> NET 45 DAYS	<input type="checkbox"/> 1% 10 DAYS NET 30 DAYS
<input type="checkbox"/> NET 15 DAYS	<input type="checkbox"/> NET 60 DAYS	<input type="checkbox"/> 2% 30 DAYS NET 31 DAYS
<input type="checkbox"/> NET 20 DAYS	<input type="checkbox"/> NET 90 DAYS	<input type="checkbox"/> 1% 30 DAYS NET 31 DAYS
<input type="checkbox"/> NET 30 DAYS	<input checked="" type="checkbox"/> 2% 10 DAYS NET 30 DAYS	<input type="checkbox"/> 5% 30 DAYS NET 31 DAYS

<u>Year</u>	<u>Support Amount</u>	<u>5yr Total</u>	<u>Pre-pay Amount (5yr)</u>	<u>Annual Cost Per Student</u>	<u>Total ADM</u>
1	150,981				
2	157,020				
3	163,301				
4	169,833				
5	<u>176,626</u>				
Subtotal		817,762	776,874		
				\$ 2.16	72,000.00

### Assumptions

Original Contract called for 4%  
 annual increase in support contract  
 Contractor provided 5% discount for prepayment

# EXHIBIT B

## Your Infinite Visions® Support Agreement

The intent of this document is to clearly define for all Windsor Management Group's (WMG) customers the terms and conditions associated with your annual **Infinite Visions Fund Accounting** Technical Support Agreement. This document will also clarify what you, as a WMG customer can expect to receive as part of this agreement, and what is not covered and will be quoted separately as a billable service.

- ❖ Windsor Management Group is committed to providing our customers with the best possible technical support for your Infinite Visions Fund Accounting system. To help facilitate this high level of technical support we require an operating environment that will allow WMG proper access to your system for diagnostic purposes. All customers running Infinite Visions are required to allow WMG to establish an internet connection to their Infinite Visions Server(s), and the desktop computers of the districts accounting staff.

### **Your Support Agreement Includes:**

The following are some guidelines to help you understand what is included with your annual support agreement and what is not.

- ❖ Product maintenance
- ❖ Product enhancements
- ❖ Regulatory changes
  - Software maintenance releases and enhancements are shipped automatically or made available through the Internet to all clients with a current support subscription. They include:
    - Program fixes and minor enhancements which have been approved through the "Software Action Request (SAR) process
    - New versions containing major enhancements
    - Regulatory changes mandated by your state or the Federal government, such as 1099s, W-2s or state mandated reports
- ❖ Documentation and on-line help text updates as necessary
- ❖ Updated user guides
- ❖ Loading instructions
- ❖ Product Alerts
- ❖ Access to on-line tutorials
- ❖ Toll free telephone technical support

**Please note:** *Old versions or releases of Infinite Visions are maintained by Technical Support for **eight weeks** following the release date of a replacement version or release. After which you may be required to update to the latest version before receiving support.*

## **Telephone Support**

- ❖ The technical support line is available to assist you with:
  - Advice or clarification on product functionality or instructions contained in the documentation

- Initial installation of software or installation of updates.
- Diagnosing and reporting suspected software or documentation problems
- ❖ Toll free technical support can be obtained during normal business hours by calling the Infinite Visions Technical Support Response Line at **(888) 654-3293, option #2.**
- WMG's normal business hours are:
  - 7:00 AM -5:00 PM MST, (Excluding WMG observed holidays)
  - WMG's holiday schedule will be published on our web site at;  
[www.infinitevisions.com](http://www.infinitevisions.com)

### **How Technical support works**

- ❖ A Call Coordinator answers all calls and assigns a call reference number to your request for service.
  - Please keep your call reference number and refer to it any time you are requesting additional support for that particular problem. (A new number will be assigned to each new problem)
  - Specialists return calls on a first-come, first-served basis (Payroll questions are given priority). WMG's goal is to respond to all calls within four business hours and to resolve all problems within one business day; however WMG will make every reasonable effort to respond to calls in the quickest possible manner.
  - Technical support is only available to business office staff who have completed a certified Infinite Visions training class pertaining to the particular module for which service is being requested. (WMG cannot support your remote site users, they must request assistance through one of your trained business off staff).
  - Emergency after hours support service is available between 5:00 PM and 10:00 PM MST Monday through Friday. This service is billable at the current published WMG hourly rate, minimum one half-hour. To activate this service select option #3 any time during the after hours support greeting. Leave your message and the support analyst on call will be paged.

**Please note:** *The Support Line is not a substitute for training. A business office staff member that has successfully completed a certified Infinite Visions product-training course on the module in question must make all calls for technical support. Support analysts have the right to refuse service to individuals who have not completed the required training.*

### **Internet Technical Support**

Customers with a valid Infinite Visions support agreement can log onto [www.infinitevisions.com](http://www.infinitevisions.com) and download program updates and product documentation as well as view on-line tutorials. You also have the ability to log your own support call by using the "Support Self Service" tools. Passwords for installation can be obtained by contacting WMG.

### **Not Included in Your WMG Infinite Visions Support Agreement**

- ❖ **Training on non-WMG products**
- ❖ **Support for multiple database sets (unless authorized by WMG)**
- ❖ **Training of Infinite Visions products over the telephone**
- ❖ **Support for other vendors' hardware or software products**
- ❖ **Support for networks (hardware or software)**
- ❖ **Support or maintenance for software versions or releases that are more than eight weeks old**
- ❖ **Support for Generally Accepted Accounting Procedures**
- ❖ **Requirements requiring customization of the software as it is shipped**

# Support Prerequisite Requirements

Prerequisite to receiving support services for a specified software module (See Attachment "A") each client staff must have completed the corresponding training program facilitated by a certified Infinite Visions trainer. Training classes range in length from one to six days and can be conducted either at the customer site, via web training, or at the WMG training center in Tempe Arizona. For more information on WMG training classes please contact the Professional Services department at 1-888-654-3293

Course Code	Course Name
APNUTS	Purchasing & Payables
PRNUTS	Payroll
GLNUTS	General Ledger
HRNUTS	Human Resources
FANUTS	Fixed Assets
DACNUTS	Distributed Accountability Centers
BVNUTS	Budget Vision
ARNUTS	Accounts Receivable

## Definitions

**Software** "Software" refers to those program modules specified herein. Software includes all codes and programs included with the modules regardless of language, medium, or format in which they may be stored, recorded or communicated. Software does not include modifications to the listed products, unless those modifications are made by WMG and are included as "Enhancements and Updates".

**Support** "Support" includes:  
Telephone consultation.  
Enhancements and Updates  
Correction of errors in software or documentation  
(See attachment "B" for details)

**Documentation** "Documentation" means all standard user information delivered to you by WMG regarding the Software including but not limited to instructions, on-line help, writings, manuals, messages, and other publications of the licensor, which may describe or explain the Software

## Central Support Services

For the basic support fees, WMG will provide the licensed entity Software Support on one set of data files, consisting of:

- A. Telephone assistance, which will be available Monday through Friday during the normal WMG business hours (7:00AM to 5:00PM Mountain Standard Time) exclusive of WMG holidays.
- B. One (1) copy of any and all corrections furnished by WMG to its Support Service customers
- C. Diagnostic services needed to correct errors in the Software or Documentation. The customer is responsible for providing WMG with sufficient information, data and portions of the Software so as to allow WMG to reproduce the error.
- D. Documentation updates as necessary
- E. Updates to user guides and help text
- F. Product Alerts
- G. Technical Bulletins
- H. Internet access to program updates

## Enhancements and Updates

Enhancements and Updates include the following:

- A. Software changes necessitated by operating system changes initiated by your hardware
- B. New releases of the software
- C. Error Corrections
- D. Improvements to the Software per WMG's discretion
- E. Improvements required by state regulatory agencies
- F. New program products are not included

- G. Enhancements and Updates, upon delivery to you, are considered to be licensed to you by WMG on the same terms and conditions as the license agreement under which you were originally licensed the Software.

## **Additional Services**

Support for versions of the software that have been replaced by a newer version will only be supported for 40 days following the release of the newer version, support for older versions will be billed to the client. Telephone support outside of WMG's normal business hours is available as part of the WMG "Emergency After-Hours" support program. Calls placed for old versions or "after-hours" will be billable to the client at the then-current rates. Calls will be a minimum of one half (1/2) hour and will increase in increments of fifteen (15) minutes

## **Customer Responsibilities**

WMG Support Services are furnished to you with the understanding and expectation that the Software, as licensed to you, will be installed and used in an operating environment which is:

- A. Approved for such use by WMG
- B. Capable of remote access to Software
- C. Properly maintained and backed up on a regular rotating schedule
- D. Free of any other programming, which might interfere with the functioning of the Software
- E. Undamaged and operated in accordance with the manufacture's specifications
- F. Upgraded as necessary to accommodate future releases and versions of the Software which may become eligible for support under the Agreement
- G. Staffed with personnel trained to the minimum training objectives as stated in Attachment A. Services provided when the minimum training standards are not met will not be covered by this Agreement and will be billed to you at the then-current rates for WMG services. WMG does not provide training through the support service.
- H. Timely installation of Enhancements and Updates in the proper sequence is your responsibility. You must have the current supported version of the Software installed at all times during the term of this Agreement. Support of prior versions will be provided for 40 days. Support of versions older than 40 days will be provided at the then-current hourly support rate.
- I. The Support Line is not a substitute for training. An individual that has successfully completed a certified Infinite Visions® product-training course on the module in question must make all calls for technical support. Support analysts have the right to refuse service to individuals who have not completed the required training
- J. All customers running Infinite Visions are required to have either:
  - Terminal Server™ with Metaframe™ and/or access to the server through the Internet

## **Confidentiality and Non-disclosure**

For purposes of this Agreement, "Confidential Information" shall mean information or material proprietary to Windsor Management Group "The Company" or designated as confidential information by The Company, which The Customer "You" obtains knowledge of through the result of Your relationship with the Company. Confidential Information includes, but is not limited to, the following information and other information of a similar nature of the Company, whether or not reduced to writing or marked as confidential:

- A. Lists of customers and prospective customers and other personal and business information relating to them;
- B. Price lists and pricing policies;
- C. Business and marketing plans;
- D. Computer programming and software development products, ideas and concepts;
- E. Computer designs and programs;
- F. Computer installation techniques and implementation programs;
- G. Computer manuals and use instructions;
- H. All financial information;
- I. All contracts;
- J. Any information described above which the Company obtains from another party and that the Company treats as proprietary or designates as Confidential Information, whether or not owned, developed or originated by the Company.



## **Exclusions**

This agreement is specific to Infinite Visions software and its operation, it does not provide support for the operating environment including hardware and network components. Support services do not inherently include training, on Infinite Visions Software, other 3<sup>rd</sup> party software, or on accounting procedures. Support for each release extends for 40 days from the release date of the subsequent release. Refer to the Customer Responsibilities Section above.

## **Transfer**

This agreement may not be assigned, conveyed, sublicensed or transferred by you.

## **Copyright**

All copyrights to the Software are exclusively owned by WMG.

## EXHIBIT C

### CONTRACTOR TRAVEL POLICY

#### Purpose

This policy is established in order to maintain a uniform definition of allowable and allocable costs acceptable to Maricopa County / Special Countys (hereinafter "the County"). It is recognized that there will be times when it is necessary for contractors to travel to the County in order to perform services under a contract. Use of this policy should insure the County does not become liable for unwarranted or excessive travel expense invoices from contractors.

- A. All contract-related travel shall be prior-approved by the County.
- B. Travel, lodging, and per diem expenses incurred in performance of County contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates:  
  
[http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA\\_BASIC](http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC)
- C. Commercial air travel shall be scheduled at the lowest available and/or most direct flight airfare rate at the time of any approved contract-related travel. A fare other than the lowest rate may be used only when seats are not available at the lowest fare or air travel at a higher rate will result in an overall cost savings to the County. Business class airfare is allowed only when there is no lower fare available to meet County needs.
- D. Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler.
  - 1. Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse the contractor if the contractor chooses to purchase these coverages.
  - 2. Rental vehicles are restricted to sub-compact, compact, or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: contractors shall obtain written approval from the County prior to rental of a larger vehicle.)
  - 3. The County will reimburse the contractor for parking expenses if free, public parking is not available within a reasonable distance of the place of County business.
  - 4. The County will reimburse for the lowest rate, long-term uncovered (e.g. covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.
- E. The contractor is responsible for any other miscellaneous personal expenses, as they are included in the contractor's lodging and per diem expenses.
- F. The County will reimburse any allowable and allocable business expense, excluding health club fees and business class air fares, except as indicated in paragraph "C" above.
- G. Travel and per diem expenses shall be capped at (TO BE PROPOSED) % of project price unless otherwise specified in individual contracts.